

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELAINE L. CHAO, Secretary
of Labor, United States Department
of Labor,
Plaintiff

CIVIL ACTION NO. 04-11301 NG

v.

LE INC, LE & PHAM INC.,
LE CAFE INC., LE & T INC.,
PHO PASTEUR INC., and
DUYEN LE,
Defendants

AFFIDAVIT OF DUYEN LE

I, Duyen Le, upon oath, do depose and state as follows:

1. I reside in Weston, Massachusetts with my wife, one daughter and two sons.
2. I emigrated to the United States from Vietnam in 1987.
3. I first settled in the Boston area in 1987.
4. Since my arrival in the Boston area, my family and I have worked countless hours, usually seven days a week, from dawn to dusk, to build a family business.
5. My family and I currently own and operate four restaurants in the Greater Boston area.
6. I was recently forced to close Le & T, Inc. in April of this year because of the economic downturn which adversely affected the restaurant business.
7. The four restaurants which my family and I operate are located in the Boston area.

8. None of these restaurants is located in the vicinity of a train terminus or an airport.
9. None of these restaurants ship food or food products to any customers outside of Massachusetts.
10. In our restaurants, we take pride in the freshness and quality of our dishes.
11. For that reason, I purchase vegetables locally from Lunfat, Inc.
12. For that same reason, I purchase also purchase my poultry and meat products locally from S.M. Sneider Co.
13. The overwhelming majority of my customers, many of whom are regulars, reside in the Boston area and live in neighborhoods not far from my four remaining restaurants.
14. So far as I know, all of the employees whom I have hired to work in the kitchens of my restaurants were or are residents of Massachusetts, and my payroll service has regularly withheld Massachusetts taxes from their earnings.
15. I use ADP as my payroll service for the payment of wages to my employees.
16. Since the opening of my restaurants, I have relied upon its advice and its standardized accounting and payroll procedures.
17. Our restaurants pay the current Massachusetts minimum wage of \$6.75 to non-waitstaff employees.
18. My employees are also permitted to order off of the menus for lunch or dinner; the employees are not charged for this food, nor are they taken off of the clock during

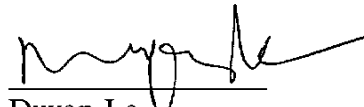
their meal breaks, or during the frequent two to three hours of "downtime" the restaurants experience each day between lunch and dinner.

19. ADP's agents repeatedly assured me and my accountant that, because of the exclusion of restaurant employees from the Massachusetts minimum wage and overtime statute, non-waitstaff restaurant employees were not entitled to be paid overtime for any work in excess of forty hours work per week.

20. When the investigators from the United States Department of Labor first contacted me about overtime payments complaints in late 2002, my accountant and I immediately cooperated with the investigators, turned over all employee records, allowed them to interview all of our employees, and meet with the investigators on a number of occasions to assist the Department of Labor in conducting its investigation.

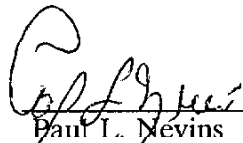
21. I assured Nancy Siciliano and her assistants in the Wage and Hour Division of the U.S. Department of Labor that our restaurants would immediately comply with any laws or regulations that we were told we must obey, and that we would immediately take all steps to assure that our restaurants were in compliance.

Sworn to under the pains and penalties of perjury, this 13th day of August, 2004.


Duyen Le

NORFOLK, ss.

Before me the above signed, Duyen Le, known to me personally, did appear and state that he had made the above statement of his own free act and will and that the facts alleged were, to the best of his knowledge, true.

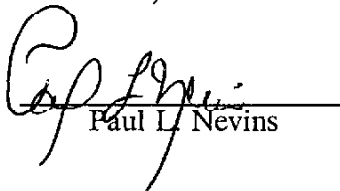


Paul L. Nevins
Notary Public
My commission expires:
June 11, 2010

Certificate of Service

The undersigned hereby certifies that, on August 13, 2004, served a true copy of the foregoing upon all parties by causing it to be sent, via first class mail, postage prepaid, to:

John S. Casler, Esquire
Deputy Regional Solicitor
U.S. Department of Labor
Office of The Solicitor
JFK Federal Building, Room E-375
Boston, MA 02203


Paul L. Nevins